O. Contracts | 53

1953

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File No. 58 | 53

Legal Dept-

G. **BRANCH**

Subject:— Opinions on Contracts

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O | Contracts | 53

File No. 58 | 53

Gen. 194 -

58 | 53

C O N T E N T S

Legal Department. O. Contract/53

Sr. No.	R. I. / O. No.	Subject	Pages.
		Opinions on contracts.	
1.	G-138 2-3-53	Whether the revocation of a proposal can be made at any time before the offer is turned in to a contract of acceptance.	1.
2.	296 21-5-53	Whether a suit can be filed against the contractor for recovery of compensation as the contract has been broken	3
3.	G.327 5-6-53	Sec. 73 Whether Govt. can forfeit the part or whole of the security deposit if the Miller commits any breach of contract.	5
4.	G.358 16-6-53	Sec. 74 Whether the contractors are liable to pay compensation for failure to supply the contracted quantity	
5.	G-373 30-6-53	Whether payment can be refused to the parties until they get the matter settled in a court of law.	9-11
6.	G-427 21-7-53	Sec. 73 Whether recovery can be made from the contractor for breach of contract even though the agreement does not provide for the same.	13
7.	G.591 24-8-53	Whether Govt. is competent to levy the fines on the Contractor without the concurrence of the Architects ~~inter~~ in terms of the agreement with the Architects and the Contractors.	15-17
8.	G-552 11-9-53	Whether the provisions of land Revenue Code would apply to adjustments of payments made voluntarily	19-

Mjr/14/8/
4 cs.

Office of the R.L.A.

The only point material for the purpose of this case is whether the offer has been revoked by Shri Muljibhai by his letter alleged to have been addressed to the Collector on the 9th March 1951. Under section 4 of the Indian Contract Act the communication of a revocation is complete as against the person to whom it is made, when it comes to his knowledge. Under section 5, a proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. Under section 6, one of the ways to revoke a proposal is by the communication of notice of revocation by the proposer to the other party. It is, therefore, apparent that revocation of a proposal may be made at any time before the offer is turned into a contract of acceptance., But revocation has necessarily to be communicated and the mere posting of letter of revocation will not suffice.(See Iyer's Law of Contract, page 57). In the present case what is contended by Shri Muljibhai is that he posted the letter of revocation to the Collector on the 9th March 1951 in support of which he has produced a certificate of posting. But there is absolutely nothing to prove that the revocation of his offer was communic ted to the Collector. The Collector denies having received the letter of revocation. As stated above mere posting of a letter of revocation would not be sufficient. Consequently, there being no revocation before acceptance of offer made by Shri Muljibhai, there was a concluded contract and Shri Muljibhai will have to pay damages equal to the difference in the market price as claimed by Govt.

Sd/- P.M.Lad

O.C. 2/3

Remembrancer of Legal Affairs.

U.R. to C.S.D., No. C- 138, dated the 2nd March 1953

Office of the R.L.A.

Under section 74 of the Indian Contract Act when a contract has been broken if a sum is named in the contract as the amount to be paid in case of such bre ach or if the contract contains any other stipulation by way of penalty the party complaining of such breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or as the case may be the penalty stipulated for. Condition 4 provides the penalty which the contractor is liable to pay on his failure to supply the full quantity of milk. It would, therefore, be feasible to recover only the reasonable amount of compensation from the contractor. For example if Government purchased the deficit quantity of milk from outside at a higher rate, the contractor can be required to make good the difference. The suit can, therefore, be filed only for recoveryof a reasonable amount of compensation from the Contractor.

Sd/- J.R.Dhurandhar

O.C. 21/5

Remembrancer of Legal Affairs.

U.... to D.S.D. No. 296/ dated the 21st May 1953.

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Legal Department.

Under condition (1) of the contract it is provided that the stock of paddy issued to the miller should be milled by him upto the maximum capacity of the mill which should be 100 bags of milled rice per day. The contract is in respect of the period from March 1953 to 31st October 1953(vide clause 21) and apparently it is intended that the miller should supply at least 100 bags of rice per day. If the millers do not show any interest and are keeping quiet in spite of sufficient quantity of paddy being supplied to them it is clear that there is a breach of condition (1) the penalty for which is prescribed in condition No.(19). That condition provides: "The Miller has deposited a sum of Rs. 1000/- with the Collector as a security deposit for due and proper fulfilment of the contract; and that Government has the right to forfeit the whole or part of the said security deposit for any breach of the contract by the miller without prejudice to any other rights of the Government." In view of the concluding part of this condition, in addition to ordering the forfeiture of part or whole of the amount of deposit, it would also be possible to recover the extra charg if any that Government might be required to pay if the millin is entrusted to other Millers. The provisions of section 73 of the Contract Act, 1872, will be attracted in that case. Under that section when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss damage caused to him thereby which naturally arose in the usu course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. The action proposed by the Director of Civil Supplied would thereforebe legally feasible.

Sd/-

O.C. Additional Secretary to Government-

U.M. to C.S.D., No.327, dated the 5th June 1953.

Mjr/14/8/

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Legal Department.

Even though no monetary loss is caused to Government by the failure on the part of the contractors to supply the contracted quantity they would be liable to pay some compensation to Government under condition 4 of the agreement in view of the words "whether or not actual damage or loss is proved to have been caused" in section 74 of the Indian Contract Act.(See Muthu Krishna v. Sankaralinga, 36 Mad. 229).

Sd/-

.o.c.

Additional Secretary to Government.

L.R. to M.C., No. G-35, dated the 16th June 1953.

Mjr/14/8/

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Legal Department.

It appears that Shri Hadadi, who had taken a contract fro Government for rice milling, entered into an agreement with shr Chunilal Dharupji and Shri Fulchand Chunilaji and executed a power of attorney in their favour whereby the latter two were entitled to recover their advances for the business out of the payments of money due to the former from Government on account of the rice milling contract and it was further agreed that unless and until there was full satisfaction of the advances made by Shri Chunilal and Shri Fulchand, Shri Hadadi should not revoke the power of attorney. By his letter dated the 14th February 1953 addressed to the Purchase Officer the contractor Hadadi has terminated the power of attorney. Shri Chunilal and Shri Fulchand have since protested against the revocation of the power of attorney and contend that the revocation was illegal and Government should pay them the amount under the contract. The Director of Grain Purchase, Bombay, has directed that no payment should be made to any party and they should take recourse to law to get their dispute settled. It is feared that in the event of non-payment the contractor may stop the work of milling. The questions raised for the H.L.A's consideration are whether payment should be refused to both the parties until they get the matter settled in a court of law and whether the contractor would be liable for non-fulfilment of the contract in the event of his refusal on the plea of non-payment of money.

Under section 202 of the Indian Contract Act, where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. In Pestanji vs. Hatchett,(7, Bombay high Court Civil A Appeal case 10), it was held;

> "Where an agent is authorised to recover a sum of money due to a third party to the principal and to pay himself out of the amount so recoverable the debts due to him from the principal, the agent has an interest in the subject matter of the agency and the authority cannot be revoked."

That principle will apply in the present case as Shri Chunilal and Shri Fulchand have an interest in the subject matter of the

agency inasmuch as they are entitled to recover the advances made by them for running the business. It would, therefore, follow that the contractor would not be entitled to revoke the power of attorney until all the advances made by Shri Chunilal and Shri Fulchand have been fully satisfied. It is not known why the contractor Hadadi has revoked the power of attorney when there is a specific and clear condition in the agreement not to revoke it until all their dues are fully satisfied. In the circumstances, Government may give a notice to the contractor Hadadi that the revocation of the power of attorney being opposed to the provisions of section 202 of the Contract Act can be ignored and the amount would be paid to Shri Chunilal and Shri Fulchand unless he obtains a stay order from a proper court within, say, a fortnight and pending this he should carry out the terms and conditions of the contract in default of which he would be held responsible for non-fulfilment of the contract.

Sd/-

O.C.

Additional Secretary to Government.

U.O. to C.S.L., No. G-373, dated the 30th June 1953.

Mjr/14/8/

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Legal Department.

Even though the agreement does not provide for recovery of damages from the party on account of the breach of contract and on account of the sales being made at a discount to a subsequent purchaser, such recovery can be made under the general law relating to contracts and sale of goods. (vide section 73 of the Indian Contract Act and section 56 of the Indian Sale of Goods Act). Before proceeding to do so, the State Textile Controller's Office may examine the contentions raised by the party's Solicitors.

Sd/-

o.c.

Secretary to Government.

U.P. to S.T. ., No. 3-427, dated the 21st July 1953.

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4 Cs.

Legal Department.

The questions for H.L.A's consideration are-

(1) whether Government is competent to levy the fines on the Contractor without the concurrence of the Architects in terms of the agreement with the Architects and the Contract

(2) If so, whether Government is precluded from levying fines at a rate lower than that prescribed in respect of eac of the works on which fines were levied: and

(3) Where Government has the right to stop the fines once levied in respect of any of the works, before the work in question is completed.

(1) Clause 23 of the agreement is quite clear on this point In the absence of a certificate from the Architect, the sum mentioned in the said clause by way of liquidated damages cannot be deducted from the contractor's bills. Thus the penalties which are not certified by the Architect will have to be refunded to the contractor.

(2) The amounts mentioned in clause 23 are to be recovered as agreed and liquidated d mages and not by way ofpenalty.

"Liquidated damages" means sum stated and agreed to be paid as damages between the parties to a contract, in the event of defaulty by either; the primary meaning of that pharse is, that the sum has been "assessed between the parties" (per Cotton L.J.Wal is v Smith, 52 L.J.Ch.154).

Liquidated damag s in a contract means the payment of a certain and reasonable sum of money which should operate to extinguish any claim of plaintiff for damages by reason of the breach of the contract by defendants".

In order to judge whether the sum named in this particular contract is not by way of penalty it would have to be seen whether this sum is not out of proportion to the damage which resulted from the breach viz- non completion of the buildings within a stipulated period. If this was the basis on which the stipulated amounts of fines were arrived at, then they would not doubt be liquidated damages and Govervme would be entitled to deduct the sums named. If on the other

hand these amounts were meant to be by way of penalty only then the provisions of section 74 of the Contract Act would be attracted and Government would be entitled only to the actual damages or loss incurred as a result of the non-completion. This case does not come within the Exception to section 74.

2. Clause 23 presupposes an instance where the contractor was solely to blame for not completing the works by a certain date. If the Architects have given a certificate to that effect for the canteen building and garages Government would be entitled to recover the sums named in the clause 23 until the said building and garages were completed provided that the total amounts recovered were not in excess of the damages resulting from the breach. Government were the best judges of this factor and therefore it was always open to Government to recover lesser amounts than those mentioned in clause 23 if they considered this sufficient to meet the resulting damages.

3. The same argument would apply in respect of the third question and if at a particular time after imposing the fine Government thought that the amounts recovered were sufficient to meet the damages resulting from the breach viz. Non-completionxxiik within a stipulated period, Government could stop further levy even though the building may not have been completed.

Sd/-

O.C.

Additional Secretary to Government.

U.R. to M.C., No. G-591, dated the 24th September 1953.

Mjr/14/8/

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Legal Department.

The view taken by the District Government Pleader is correct. Section 59 of the Indian Contract Act provides that where a debtor owing several distinct debts to one person, makes a payment to him either with express intimation or under circumstances implying that the payment is t be applied to the discharge of some particular debt, the payment if accepted must be applied accordingly. In this case although there was a running account for the years 1951-52 and 1952-53, the debts were in respect of foodgrains issued to the R.D. Cs. from time to time on credit and the debt in respect of each consignment can be said to be a distinct debt. The debtors viz. the R.D.C. managers have quoted in the chalans the year against which the payments made by them were to be adjusted and Government has accordingly adjusted them. The contention of the sureties for 1952-53 that the sale proceeds of foodgrains issued on credit in 1952-53 should be adjusted against the dues of that year first is not correct. The provisions of the Land Revenue Code would not apply to adjustments of payments made voluntarily. These provisions would apply only to amounts recovered as arrears of land revenue under the Code.

Sd/-

O.C.

Secretary to Government.

U.R. to R.S.D., No. G.552, dated the 11th September 1953.

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